

FILED

July 22 2016

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *s/ carolinal* DEPUTY

Darren Chaker
1140 Wall Street #77
La Jolla, Ca 92038
DarrenChaker@Gmail.com
213/915-6804

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DARREN CHAKER,

Plaintiff,

vs.

LEESA FAZAL, et. al.

Defendants.

Case No.: **16CV1872 CAB BLM**
**EX PARTE APPLICATION TO FILE
COMPLAINT UNDER SEAL AND ISSUE
PRELIMINARY PROTECTIVE ORDER**

[L.R. 79.2]

COMES NOW DARREN CHAKER, Petitioner, and files this Motion to Seal the Complaint under seal and issue a preliminary protective order.

I. GOOD CAUSE EXISTS TO FILE THE COMPLAINT UNDER SEAL SINCE IT DISCLOSES SEALED COURT AND POLICE RECORDS, MEDICAL RECORDS, AND A PENDING CRIMINAL FEDERAL INVESTIGATION INTO A FEDERAL AGENT.

The Supreme Court has reaffirmed strong privacy interests in dissemination of personal, confidential information. *See Whalen v. Roe*, 429 U.S. 589, 599 (1977); *Nixon v. Administrator of General Services*, 433 U.S. 425, 457-59 (1977).

In support of Plaintiff's Complaint, he cited to numerous exhibits. Many of the exhibits include.

- a. Reference to sealed family law case pages 8-14, and an accompanying sealed court order (all paternity cases are sealed), birth certificate, and voluntary acknowledgement of paternity;
- b. Repeated reference to a sealed police report¹, pages 5-18;

¹ See NRS § 179.285(a) ["All proceedings recounted in the record are deemed never to have occurred..."] Likewise, in California, "[I]f an agency receives an inquiry regarding a record

- 1 c. Medical record excerpt at page 32, as well as repeated references to second
 2 revocation petition which was dismissed throughout complaint, and then
 3 sealed by the district court, as well as full medical reports and drug testing
 4 results are part of a medical exam², [medical record³] as exhibits.
- 5 d. Excerpt of third revocation petition alleging violations based on First
 6 Amendment rights, page 43, which is no longer a public record as it was
 7 withdrawn by USPO at the direction of the district court on February 29,
 8 2016.
- 9 e. The name of and explicit details concerning Plaintiff obtaining and
 10 providing an AUSA and two FBI special agents with information
 11 concerning a Homeland Security special agent's unethical and illegal
 12 conduct. *See*, Complaint, Pages 62-63⁴.

13 Given the nature of the information and records contained within the complaint,
 14 Plaintiff requests Defendants are ordered to not disclose the nature of the complaint or its

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 16 which has been sealed, the proper response is '[w]e have no record on the named individual,'
 17 even though the record may physically still exist." *Parmett v. Superior Court*, 212 Cal.App.3d
 1261, 1

18 ² *See* 42 U.S.C. § 12114(d).

19 ³ Drug and alcohol testing programs clearly implicate individual privacy rights for both public
 and private employees. (*See Hill v. National Collegiate Athletic Ass'n*, 7 Cal. 4th 1 (1994).) 265,
 262 Cal.Rptr. 387 (1989).

20 ⁴ District courts have identified as one of them the need to avoid "jeopardizing ongoing or
 future investigations," *United States v. Milken*, 780 F. Supp. 123, 127 (1991), and "[t]he need
 21 for confidentiality of the investigation," *United States v. Park*, 619 F. Supp. 2d 89, 94
 22 (S.D.N.Y. 2009). *United States v. Huntley*, 943 F. Supp. 2d 383, 386, 2013 U.S. Dist. LEXIS
 65057, *7, 2013 WL 1881536 (E.D.N.Y. 2013) The Government will routinely seek to seal
 23 records to protect the integrity of the Government's ongoing investigations. *See United States*
 24 *v. Haller*, 837 F.2d at 87 (closure of paragraph of plea agreement appropriate because it was
 "essential to protect the secrecy of sensitive matters affecting a grand jury proceeding and an
 25 ongoing criminal investigation") *See also People v. Seibel* (1990) 219 Cal.App.3d 1279, 1289
 26 ["And in the big-time drug business, to inform is to **sign one's death warrant.**"]; *People v.*
 27 *Pacheco* (1972) 27 Cal.App.3d 70, 80 ["It does not take a lively imagination to realize that
 [disclosure of an informant's identity] **might constitute a death warrant for the informer**"].
 (emphasis added)

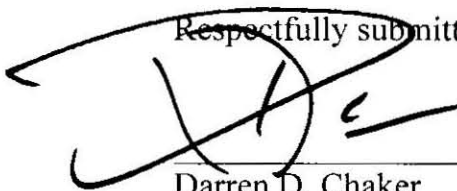
1 exhibits in any capacity with a third party, be it through oral disclosure or disclosing
2 physical documentation.

3 **CONCLUSION**

4 Plaintiff requests this honorable Court grant this application by ordering;

- 5 1. the instant motion be sealed since it discloses detailed information about
6 confidential records;
7 2. The complaint and its exhibit are to be filed under seal; and
8 3. Defendants are ordered to not disclose the contents of the complaint or its
9 exhibits in any manner to a third party until a hearing is held on the matter.

10 DATED: 7/21/16

11 Respectfully submitted,
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14 Darren D. Chaker
15 Plaintiff
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